

GARY C. LANDERS  
CITY ATTORNEY

JAMES SHOWN  
SHARON K. FISHER  
ASSISTANT CITY ATTORNEYS



CITY OF TYLER  
TEXAS

P.O. BOX 2039  
TYLER, TEXAS 75710  
CITY HALL  
212 NORTH BONNER  
(214) 531-1161

*Legal Department*

August 24, 1989

**RECEIVED**

The Honorable Jim Mattox  
Attorney General of Texas  
P. O. Box 12548  
Austin, TX 78711-2548

SEP 07 89  
**Opinion Committee**

*RQ-43*

*IP# 6318*

Re: Requiring City of Tyler to Turn Over Copy of Rape Victim's  
Statement to Rapist; Our File #89-0103

Dear General Mattox:

The Open Government Section staff has recently ordered the City of Tyler to turn over to a convicted rapist most of the statement made by the rape victim to the police. This was shocking to the Police Department and Legal Department of the City of Tyler and devastating to the family of the victim.

The family of the victim is keeping that staff decision from the victim, who has had a long and difficult psychological adjustment following her assault and who will be greatly traumatized if the official law enforcement agencies of this State do not give her the kind of protection that she deserves. It might be useful for the staff to talk to the victim's mother, Mrs. James Porter of Chandler, Texas, (214) 849-3479, and explain how the great principles of government require you to sacrifice the interests of her daughter.

At the Open Government Conferences, I have heard how this Act keeps us all free from the secret machinations of governmental officials. Certainly these are legitimate intentions of the Act. What I do not understand is why a convicted felon, who has justly lost his right to participate in some governmental affairs, should be able to distort and abuse the intended purposes of the Open Records Act. If he has any legitimate concern over his conviction process, let him bring this to the attention of the courts where a judge's en camera review will determine whether any of the information contained in the victim's statement would support his claims of injustice.

We can all acknowledge that the Open Records Act has gone far in permitting private citizens to have a view of official actions. But I think that discretion and judgment in individual cases is tremendously important. I believe that the staff has developed an unnecessary case of channel vision in dealing with the exceptions set out in Section 3(a) of Article 6252-17a. I believe that the legislators who passed this Act would be as surprised as I have been that the disclosure of the victim's statement would not be protected by either Sections 3(a)(1) or 3(a)(8). I know of no court decision that would compel a State staff or this City to find that a rape victim's statement is not entirely private and confidential. No court decision has compelled the release of a rape victim's statement contained in records of a law enforcement agency

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and which is maintained for internal use in matters relating to law enforcement and prosecution. The difficulties arising from this case are related strictly from the staff's interpretation of the law as opposed to a defect in the law itself.

I am urging the reconsideration of the attached Open Government Opinion Committee letter. If this is not done, we will need to file an action for declaratory judgment in order to seek protection for our Police Chief from criminal prosecution because the department, in good conscience, cannot release this information without a court order.

Sincerely,

  
James Showen  
Senior Assistant City Attorney

JS/sp

Attachment

cc: Mrs. James Porter  
Route 1, Box 1180  
Chandler, TX 75758

Senator Ted Lyon  
P. O. Box 12068, Capitol Station  
Austin, TX 78711

Representative David Hudson  
P. O. Box 2910, Capitol Station  
Austin, TX 78769

Chief Larry Robinson  
Tyler Police Department